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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,672	09/30/2003	William Kress Bodin	AUS920030241US1	6744
34533 7590 04/10/2008 INTERNATIONAL CORP (BLF) c/o BIGGERS & OHANIAN, LLP P.O. BOX 1469 AUSTIN, TX 78767-1469				
EXAMINER MANTWANG, JOSEPH R				
ART UNIT 2144		PAPER NUMBER		
MAIL DATE 04/10/2008		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/675,672

**Applicant(s)**

BODIN ET AL.

**Examiner**

JOSEPH R. MANIWANG

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 2, 4, 8, 9, 11, 15, 16 and 18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 8, 9, 11, 15, 16 and 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/888)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 01/03/08 has been entered.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 2, 4, 8, 9, 11, 15, 16, and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Markel et al. (U.S. Pat. App. Pub. 2002/0174425), hereinafter referred to as Markel.

4. Regarding claims 1, 8, and 15, Markel disclosed a method and system comprising sensing, by a transmitting device, characteristics of a user to derive one or

more user metrics for the user (paragraph [0011]-[0013], [0028]); receiving, by a controller from the transmitting device, at least one user metric for the user (paragraph [0011]-[0013], [0028]); receiving, by the controller from a network device connected within the network, network device content metadata representing one or more characteristics of content sent over the network to the network device, the content comprising media that varies according to interests of the user, the network device generating a first form of physical output from the content (paragraph [0011]-[0013], [0027], [0040], [0053]); responsive to receiving the user metric and receiving the network device content metadata, transmitting, by the controller, a signal to the network device to change the physical output (paragraph [0029], [0032], [0053]); and responsive to the signal, generating, by the network device, a second form of physical output from the content (paragraph [0012], [0013]).

5. Regarding claims 2, 9, and 16, Markel disclosed the method and system wherein receiving, by a controller from the transmitting device, at least one user metric for the user comprises receiving at least one metric from a metric sensor worn by the user (paragraph [0011]-[0012], [0030]-[0032], [0043], [0045]-[0049]).

6. Regarding claims 4, 11, and 18, Markel disclosed the method and system wherein network device content metadata comprises data embedded within a signal received by the network device (paragraph [0040], [0053]).

### ***Response to Arguments***

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7. Applicant's arguments with respect to claims 1, 2, 4, 8, 9, 11, 15, 16, and 18 have been considered but are moot in view of the new ground(s) of rejection. Examiner submits that the newly amended claims are taught by the prior art of record as detailed in the above rejection under 35 U.S.C. 102(e).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Willner et al. (U.S. Pat. No. 7,016,968)

Kitsukawa et al. (U.S. Pat. No. 7,225,456)

Kitsukawa et al. (U.S. Pat. No. 7,096,489)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSEPH R. MANIWANG whose telephone number is (571)272-3928. The examiner can normally be reached on Mon-Fri 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William C. Vaughn can be reached on (571) 272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JM

/William C. Vaughn, Jr./  
Supervisory Patent Examiner, Art Unit 2144